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{ REPORT
No. 2025

DAVID BRAITHWAITE AND ORVIN E. WILDE

JULY 1 (legislative day, JUNE 27), 1952.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5911]

The Committee on the Judiciary, to which was referred the bill (H. R. 5911) for the relief of David Braithwaite and Orvin E. Wilde, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this private bill is to pay to David Braithwaite, a sum sufficient to satisfy the judgment and court costs recovered by him against Orvin E. Wilde, on March 29, 1951, but not to exceed \$176.01. This bill will also pay to Orvin E. Wilde, a sum equal to \$176.01 less the amount paid by the Secretary of the Treasury to the said David Braithwaite. These payments are to be made in full settlement of all claims of the said Braithwaite and Wilde against the United States arising out of a collision which occurred in Provo, Utah, on December 15, 1948, which involved a mail truck operated by the said Wilde as an employee of the United States postal service.

STATEMENT

On December 15, 1948, Orvin E. Wilde was driving a post-office truck on official business in a southerly direction on Nineteenth West Street in Provo, Utah. This street was 36 feet wide and there was a 14-foot paved strip in the center of it. There were no curbs to the street and no traffic control of any kind. The postal carrier indicated that the snow piled at the side of the street by snow plows caused him to stop the truck in the right traffic lane. After Mr. Wilde brought

his truck to a stop on the side of the road he moved toward the rear of the truck to assist his helper in checking parcels for delivery.

The Braithwaite car, driven by Mrs. Braithwaite, approached from the rear of the mail truck and it slid and skidded some 50 feet and struck the rear end of the mail truck. When a policeman was called, the postal carrier was cited for illegal parking and he was fined \$1. There was no damage to the United States postal vehicle, although Mr. Braithwaite's vehicle sustained property damage.

Mr. Braithwaite filed a claim which was disallowed by the Post Office Department on the ground that the evidence did not establish the responsibility of the United States. Subsequently Mr. Braithwaite brought suit in the District Court of Utah County, Utah. The court found the postal carrier negligent for stopping his truck too far from the edge of the street. The court also found Mrs. Braithwaite negligent for following the truck too closely. But under Utah law the owner of the car, Mr. Braithwaite, was held not responsible for his wife's negligence, and judgment was rendered against the postal carrier in the sum of \$156.41.

This type of a private claim has presented the committee with considerable concern. On the one hand the relationship between the United States and one of its employees is the dominant factor. On the other the United States assumes a sovereign relationship with one of her citizens.

With respect to the Government employee, in this case a postal carrier, it must be borne in mind that as between the United States and one of its employees the ultimate responsibility for the negligence of the employee rests on the employee's shoulders. Even when a judgment has been obtained under the Federal Tort Claims Act the United States has a right of action over against the employee.

The Federal Government has not, however, followed such an extreme policy. Especially in these private claims this committee has recognized that the drivers of Government vehicles are not covered by insurance and do not have an opportunity to obtain such insurance. Consequently each claim is scrutinized on its merits. If in the opinion of the committee there was no negligence on the part of the postal carrier or his negligence was only slight the committee would undertake to relieve him. If on the other hand the postal carrier has exceeded the scope of his employment or has been substantially negligent the committee will not undertake to relieve the postal carrier.

In this particular instance the committee is of the opinion that the negligence of the postal carrier was only slight and consequently recommends that he be relieved as provided in this bill, H. R. 5911. There is ample precedent for such action in S. 2147, S. 1988, S. 1741, and more recently in S. 1690, all in the Eighty-second Congress.

The relationship between the United States and one of her citizens, the claimant here, presents a more difficult problem. By enacting the Federal Tort Claims Act the United States has provided both an administrative and a legal remedy for claims of this nature. If the claim is under \$1,000, it can be submitted to the department concerned. This was done by Mr. Braithwaite and the claim was denied. But Mr. Braithwaite still had an available remedy by a suit under the Federal Tort Claims Act. He elected instead to sue in a State court and then by a private bill to seek to have the United States pay the judgment obtained against the postal carrier.

It should be obvious that this is in theory a means of circumventing the Federal Tort Claims Act. If this were tolerated, it would obviously defeat the provisions of the general law. While it has not been the policy of this committee to turn down all private claims solely on this ground, there is no reason for permitting a claimant who seeks more than he could obtain administratively from evading the terms of the act. On the contrary, however, when a claimant seeks a relatively small claim as here it would obliterate the judgment to impose the heavy costs and fees of a Federal suit on the claimant. It is for this reason that the committee is constrained to consider the private bill in lieu of recommending that the claimant institute a suit under the Federal Tort Claims Act.

The information contained in the report of the Post Office Department and the House Report No. 1827, Eighty-second Congress, second session, would indicate that the postal carrier was guilty of negligence. The judge, before whom the case was tried, was satisfied on this question of negligence; he found the postal carrier liable. The committee is not disposed to go behind that finding. Consequently the committee recommends that Mr. Braithwaite be relieved as provided in this bill.

One further consideration deserves attention. The judgment herein discussed was obtained by the owner of the private vehicle. It was his wife, however, who collided with the postal truck. Although the court found the husband who owned the car responsible for his wife's negligence, the committee was prepared to set off against Mr. Braithwaite any damage done to the postal truck. A routine check with the Post Office Department, however, disclosed that no damage was done to the postal vehicle in this accident.

The report of the Post Office Department, dated February 21, 1952, and the report of the Department of Justice, dated February 26, 1952, are set forth in full below. Attention is directed to House Report No. 1827 to accompany H. R. 5911, Eighty-second Congress, second session, and particularly to the supplemental data set forth therein.

OFFICE OF THE POSTMASTER GENERAL,
Washington 25, D. C., February 21, 1952.

Hon. EMANUEL CELLER,

Chairman, Committee on the Judiciary, House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your letter of January 16, requesting a report on H. R. 5911 for the relief of David Braithwaite and Orvin E. Wilde.

Carrier Wilde was operating a post-office truck south on a 36-foot street which has a paved strip 14 feet wide in the center of the street. There were no curbs to the street and no traffic control of any kind. The carrier brought his truck to a stop on the side of the road and had alighted from the truck, and was moving toward the rear of the truck to assist his helper in checking parcels for delivery, when a private car, driven by Mrs. Braithwaite, slid into the rear end of the mail truck. The private car skidded at least 50 feet before colliding with the truck. Notwithstanding what seemed to be the obvious negligence of the operator of the private car, Carrier Wilde was cited for illegal parking by the police and fined \$1.

Mr. Braithwaite filed a claim which was disallowed by the Department on the grounds that the evidence did not establish the responsibility of the Government. Thereupon he brought suit, in which his insurance company joined. In the trial of this suit the court found the postal chauffeur negligent for stopping his truck too far from the edge of the street. The court also found Mrs. Braithwaite negligent for following the truck too closely. However, under Utah law the owner of the car was held not responsible for his wife's negligence, and judgment was rendered against the carrier in the sum of \$156.41.

Since the Department's investigation disclosed evidence indicating that the carrier was without fault, notwithstanding which fact a judgment has been ren-

dered against him, it would seem equitable that this bill, which is designed to afford relief to the carrier, should be approved, and I so recommend.

This Department has been advised by the Bureau of the Budget that it would have no objection to the presentation of this report to the committee.

Sincerely yours,

J. M. DONALDSON,
Postmaster General.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, February 26, 1952.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 5911) for the relief of David Braithwaite and Orvin E. Wilde.

The bill would provide for payment to David Braithwaite of a sum sufficient (not to exceed \$176.01) to satisfy the judgment and court costs recovered by him against Orvin E. Wilde, and to Orvin E. Wilde a sum equal to \$176.01, less the amount paid under authority of this act to David Braithwaite, but in no case to exceed the total amount which may have been paid by Orvin E. Wilde, in partial or full satisfaction of the judgment and court costs recovered against him.

In compliance with your request, a report was obtained from the Post Office Department concerning this legislation. That report, which is enclosed, sets out in detail the facts concerning the claim. Briefly stated, it appears that Orvin E. Wilde who was operating a post-office truck, stopped at the side of the road to assist his helper check parcels for delivery. A car, driven by Mrs Braithwaite, slid into the rear of the mail truck. The car skidded at least 50 feet before colliding with the truck.

After a claim filed by Mr. Braithwaite, owner of the car was disallowed by the Post Office Department on the grounds that the evidence did not establish responsibility of the Government, he brought suit, in which his insurance company joined. The court found Mr. Wilde negligent for stopping his truck too far from the edge of the street, but also found Mrs. Braithwaite negligent for following the truck too closely. Under Utah law, however, the owner of the car was held not responsible for his wife's negligence, and judgment was rendered against Wilde in the sum of \$156.41.

The Post Office Department states that since its investigation disclosed evidence indicating that the carrier was without fault, notwithstanding which fact a judgment has been rendered against him, it would seem equitable that this bill, which is designed to afford relief to the carrier, should be approved, and it so recommends.

Whether the bill should be enacted presents a question of legislative policy concerning which the Department desires to make no recommendation.

The Director of the Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Sincerely,

A. DEVITT VANECH,
Deputy Attorney General.